

Message Text

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C O N F I D E N T I A L STATE 256615

EXDIS, TOSEC 202

E.O. 11652: GDS

TAGS: OVIP (KISSINGER, HENRY A.)

SUBJECT: LETTERS TO ROSENTHAL

FOR SECRETARY FROM HOLTON AND MAW

1. WE HAVE TWO LETTERS FROM ROSENTHAL, ET. AL. WHICH ARE IN NEED OF IMMEDIATE REPLY. ONE REQUESTS A STATEMENT ON THE DEPARTMENT'S LEGAL POSITION ON TURKISH AID. THE SECOND CONTAINS A SERIES OF QUESTIONS ON THE SIZE OF OUR TURKISH AID AND THE MEASURES WE HAVE TAKEN TO INSURE COMPLIANCE WITH PL 93-448. INFORMATION REQUIRED TO ANSWER SECOND LETTER HAS ONLY NOW COME THROUGH FROM DOD. WE FIND THAT ACTUALLY IN ADDITION TO CONTINUATION OF PIPELINE, CASH SALES WERE MADE OF MAINTENANCE, SPARE PARTS, ETC., BUT NOT OF CAPITAL END ITEMS.

2. FOLLOWING ARE PROPOSED REPLIES, FIRST, TO THE ROSENTHAL, BRADEMAS, SARBANES AND KYROS LETTER AND, SECOND, THE LETTER REQUESTING DETAILED INFORMATION FROM ROSENTHAL'S FOREIGN AFFAIRS EUROPEAN SUB-COMMITTEE. MAY WE HAVE YOUR CLEARANCE TO PROCEED?
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3. FIRST LETTER.

DEAR MR. ROSENTHAL:

I HAVE DISCUSSED WITH THE SECRETARY YOUR LETTER OF OCTOBER 28, IN WHICH YOU WERE JOINED BY MESSRS. BRADEMAS, SARBANES AND KYROS, REQUESTING AN EXPLANATION OF THE DEPARTMENT OF STATE'S LEGAL POSITION REGARDING U.S. MILITARY AID TO TURKEY. HE HAS ASKED ME TO PROVIDE A RESPONSE TO THE ISSUES YOU HAVE RAISED.

MY LETTER OF OCTOBER 22, TO WHICH YOU REFER, ADDRESSED ONLY THE POLICY ASPECTS OF OUR ASSISTANCE TO TURKEY. AS YOU KNOW, THE UNITED STATES HAS BEEN MAKING EVERY EFFORT TO PLAY A USEFUL ROLE AND TO ASSIST THE PARTIES TO ARRIVE AT A PEACEFUL RESOLUTION OF THE CYPRUS DISPUTE. AT THE SAME TIME, WE HAVE BEEN CONCERNED THAT OUR NATO ALLIANCE IN THE CRUCIAL EASTERN MEDITERRANEAN NOT BE JEOPARDIZED. CLEARLY, A DENUNCIATION OF TURKEY FOR ITS USE ON CYPRUS OF ARMS FURNISHED BY THE UNITED STATES, OR THE CUTTING OFF OF MILITARY OR ECONOMIC ASSISTANCE, WOULD NOT CONTRIBUTE TO A SETTLEMENT ON CYPRUS OR HELP GREECE OR THE GREEK CYPRIOT PEOPLE. THE ROLE OF THE UNITED STATES IN RELATION TO CYPRUS MUST BE TO ASSIST AND PERSUADE THE PARTIES TO RESOLVE THEIR DISPUTE PEACEFULLY. IN THIS EXTREMELY SENSITIVE NEGOTIATING SITUATION, WE HAVE TRIED TO PRESERVE VITAL UNITED STATES FOREIGN POLICY AND SECURITY INTERESTS. ABOVE ALL, WE HAVE ENDEAVORED TO AVOID MEASURES THAT WOULD DEFEAT OUR POLICY OBJECTIVES.

AS YOU APPRECIATE, TURKEY'S MILITARY INTERVENTION IN CYPRUS IN JULY, AND ITS FURTHER ACTIONS ON THAT TROUBLED ISLAND IN AUGUST, RAISED DIFFICULT QUESTIONS UNDER THE UNITED STATES FOREIGN ASSISTANCE AND FOREIGN MILITARY SALES LEGISLATION. WE ENDEAVORED TO STEER A COURSE CONSISTENT WITH THAT LEGISLATION AND UNITED STATES FOREIGN POLICY AND SECURITY INTERESTS.

UNDER A 1947 AGREEMENT WITH TURKEY, TURKEY HAD AGREED NOT
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TO USE U.S. FURNISHED DEFENSE ARTICLES FOR PURPOSES OTHER THAN THOSE FOR WHICH THEY WERE FURNISHED WITHOUT FIRST OBTAINING U.S. CONSENT. THE AGREEMENT ALSO PROVIDED THAT U.S. ASSISTANCE WOULD BE FURNISHED IN ACCORDANCE WITH APPLICABLE U.S. LAW. THUS, TURKEY'S USE OF DEFENSE ARTICLES FURNISHED UNDER THE 1947 AGREEMENT WAS LIMITED TO THE PURPOSES SET OUT IN THE APPLICABLE U.S. LEGISLATION. SECTION 502 OF THE FOREIGN ASSISTANCE ACT AND SECTION 4 OF THE FOREIGN MILITARY SALES ACT SPECIFIED

THESE PURPOSES AS INCLUDING SELF DEFENSE, INTERNAL SECURITY, AND PARTICIPATION IN COLLECTIVE ARRANGEMENTS OR MEASURES CONSISTENT WITH THE UN CHARTER.

TURKEY MAINTAINED THAT ITS ACTIONS WERE JUSTIFIED AS MEA-

SURES CONSISTENT WITH THE UN CHARTER UNDER THE 1960 TREATY OF GUARANTY TO WHICH THE GOVERNMENT OF TURKEY, THE UNITED KINGDOM, GREECE AND CYPRUS ARE PARTIES. IT WAS CLEAR THAT TURKEY FELT ITS ACTIONS WERE JUSTIFIED AND NECESSARY IN LIGHT OF THE EVENTS WHICH HAD TRANSPIRED ON CYPRUS PRIOR TO THE TURKISH INTERVENTION.

SECTION 505(D) OF THE FOREIGN ASSISTANCE ACT AND SECTION 3(C) OF THE FOREIGN MILITARY SALES ACT PROVIDE THAT A COUNTRY WHICH COMMITS A SUBSTANTIAL VIOLATION OF AN AGREEMENT SUCH AS THE 1947 AGREEMENT WITH TURKEY BECOMES IMMEDIATELY INELIGIBLE FOR FURTHER ASSISTANCE, SALES, CREDITS OR GUARANTIES. APPLICATION OF THESE PROVISIONS IN THE CONTEXT OF THE CYPRUS CONFLICT POSED SERIOUS PROBLEMS. THE STATUTES APPEARED TO CONTEMPLATE A UNILATERAL DETERMINATION BY THE UNITED STATES AS TO WHETHER TURKEY HAD COMMITTED A SUBSTANTIAL VIOLATION OF ITS OBLIGATION UNDER THE 1947 AGREEMENT TO USE U.S. FURNISHED DEFENSE ARTICLES ONLY FOR PURPOSES CONSISTENT WITH THE U.N. CHARTER. SUCH A DETERMINATION WOULD HAVE REQUIRED US, IN THE IMPLEMENTATION OF A DOMESTIC STATUTE, TO EXPRESS A CONCLUSION ABOUT THE LEGITIMACY OF TURKEY'S ACTIONS UNDER INTERNATIONAL LAW. WE KNEW THAT WHATEVER DECISION WE REACHED, IF MADE PUBLIC, WAS CERTAIN TO ALIENATE AT LEAST ONE OF THE PARTIES TO THE CONFLICT, AND WOULD

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DIMINISH U.S. INFLUENCE WITH THAT PARTY. THUS, ANY PUBLIC JUDGMENT ABOUT THE LEGITIMACY OR ILLEGITIMACY OF THE TURKISH ACTION WOULD HAVE SERIOUSLY IMPEDED OUR ABILITY TO WORK FOR A NEGOTIATED SETTLEMENT AND TO PRESERVE THE NATO ALLIANCE.

AFTER CAREFULLY WEIGHING THE LEGAL AND FOREIGN POLICY CONSIDERATIONS, THE ADMINISTRATION DECIDED THAT IT WAS IMPOSSIBLE PUBLICLY TO EXPRESS A LEGAL CONCLUSION ON THE ISSUE OF TURKEY'S ELIGIBILITY FOR FURTHER ASSISTANCE AND SALES WITHOUT UNDERMINING OUR FOREIGN POLICY OBJECTIVES. NEVERTHELESS, WE MADE ADJUSTMENTS IN THE OPERATION OF OUR MILITARY ASSISTANCE AND SALES PROGRAMS WITH A VIEW TO ENSURING MAXIMUM POSSIBLE COMPLIANCE WITH THE RELEVANT STATUTES UNDER THE EXISTING CIRCUMSTANCES.

FOLLOWING THE TURKISH INTERVENTION IN CYPRUS, AND UNTIL AFTER OCTOBER 29, 1974, THE UNITED STATES MADE NO FURTHER

GRANTS OF MILITARY EQUIPMENT TO TURKEY. ALSO, ACTION WAS DEFERRED ON A SCHEDULED CREDIT TO FINANCE A 1972 AIRCRAFT PURCHASE AND NO CREDITS OR GUARANTIES WERE ISSUED DURING THAT PERIOD. TURKISH REQUESTS FOR OFFERS TO SELL ADDITIONAL MILITARY END ITEMS ON A CASH BASIS WERE ALSO HELD IN A PENDING STATUS. ROUTINE CASH SALES OF MAIN-

TENANCE, SPARE PARTS AND COMPONENTS FOR END ITEMS PREVIOUSLY SUPPLIED WERE CONTINUED BECAUSE THEY COULD NOT BE TERMINATED WITHOUT APPEARING TO EXPRESS A DETERMINATION AS TO ELIGIBILITY. COMMENCING OCTOBER 29, WHEN THE PRESIDENT SIGNED THE DETERMINATION AUTHORIZED BY PUBLIC LAW 93-448, SUSPENDING THE APPLICATION OF STATUTORY RESTRICTIONS ON ASSISTANCE AND SALES TO TURKEY, NORMAL PROCESSING OF THE TURKISH PROGRAMS HAS BEEN RESUMED.

DURING THE PERIOD FOLLOWING TURKEY'S INTERVENTION ON CYPRUS AND PRIOR TO THE PRESIDENT'S OCTOBER 29 DETERMINATION, DELIVERIES OF ITEMS IN THE PIPELINE CONTINUED. WHILE WE MADE NO NEW COMMITMENTS TO GRANT DEFENSE ARTICLES TO TURKEY, TO EXTEND FURTHER CREDITS, OR TO APPROVE CASH SALES OF NEW MILITARY END ITEMS, WE DID NOT CANCEL EXISTING COMMITMENTS OR INTERRUPT THE FLOW OF MATERIALS ON CONFIDENTIAL

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ORDER UNDER SUCH EXISTING COMMITMENTS. WE BELIEVE THIS COURSE OF ACTION WAS CONSISTENT WITH STATUTORY RESTRICTIONS AGAINST "FURTHER" ASSISTANCE, GIVEN THE CIRCUMSTANCES IN THIS CASE. FURTHERMORE, THE STATUTES APPEAR TO LEAVE THE PRESIDENT WITH DISCRETION TO DE
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